

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NO. CR 05-1849 JH

DANA JARVIS et al.,

Defendant.

**DEFENDANT AYLA JARVIS' MOTION FOR BILL OF PARTICULARS**  
**AS TO COUNT 3 AND THE FORFEITURE ALLEGATION**  
**OF THE SUPERSEDING INDICTMENT**

COMES NOW the Defendant, Ayla Jarvis, by and through her attorney John F. Robbenhaar, and pursuant to Fed. R. Crim. P. 7(c)(1), 7(f) & 12(b)(3)(B), Title 18 United States Code Section 5031 et seq., and the Fifth Amendment to the United States Constitution, respectfully requests that the Court issue an Order directing that the United States Attorney's Office provide a bill of particulars as to the evidence it intends to offer against the Defendant Ayla Jarvis as to Counts 3 and the Forfeiture Allegation of the Superseding Indictment. At present, there is no way to discern from the Superseding Indictment or information produced by the Government in discovery whether or not acts committed by the Defendant Ayla Jarvis supposedly in furtherance of Count 3 occurred while Ms. Jarvis was a juvenile or after Ms. Jarvis' 18<sup>th</sup> birthday. As such, Ms. Jarvis is unable to effectively present a jurisdictional defense based on the Federal Juvenile Delinquency Act, let alone prepare defenses for trial and/or understand issues related to foreseeability and co-conspirator hearsay.

In support, Ms. Jarvis states the following.

## BACKGROUND AND INTRODUCTION

1. The Defendant Ayla Jarvis has been charged in Count I of the Superseding Indictment with Conspiracy to Distribute 1000 Kilograms and More of Marijuana, contrary to 21 U.S.C. § 846. Ms. Jarvis has also been charged in Count 3 with Conspiracy to Launder Money, contrary to 18 U.S.C. § 1956(h), and in a Forfeiture Allegation, contrary to 18 U.S.C. § 982 and 21 U.S.C. § 853.

2. Ms. Jarvis was born in 1986 and turned 18 approximately 13 months prior to her arrest in August 2005. Accordingly, Ayla Jarvis was an adult for just thirteen months of the approximate sixteen years of alleged conspiracy.

3. Count 1 alleges a conspiracy which commenced in “approximately 1990” and lasted through August 25, 2005. Without providing a specific date, the Government alleges that “Prior to purchase, the marijuana was inspected for quality by Dana Jarvis and/or another member of the conspiracy, including Dana Jarvis’ daughter, the defendant Ayla Jarvis.” Superseding Indictment, at 2 [Doc. 414]. No other reference to the conduct of Ms. Jarvis is made in regards to Count 1 of the Superseding Indictment. Count 3 generically recites a time period from 1990 to August 25, 2005, and does not identify any specific acts by Ms. Jarvis in furtherance of the alleged conspiracy to launder money. Similarly, the Forfeiture Allegation names Ms. Jarvis but fails to identify any specific act committed by Ms. Jarvis which would support the forfeiture; rather, the Forfeiture Allegation states only that forfeiture would result “[u]pon conviction of one or more of the offenses alleged in Counts 1 through 26 of this Superseding Indictment...”

4. The lack of specificity in Count 3 of the Superseding Indictment as to Ayla

Jarvis requires dismissal pursuant to Fed R. Crim. P. 12(b)(3)(B) as it fails to state an offense, and fails to afford the Defendant Ayla Jarvis due process in notice of the charges against her with sufficient particularity such that she can defend against them. The Superseding Indictment also fails to ensure that the grand jury was actually presented with evidence of the essential elements of the offenses alleged in Count 3 and the Forfeiture Allegation, potentially allowing eventual convictions of Ms. Jarvis on charges never considered by a grand jury. In the alternative and at minimum, the Defendant Ayla Jarvis is entitled to a Bill of Particulars pursuant to Fed. R. Crim. P. 7(f) giving her the “*substantive facts* of the charges against [her].” *United States v. Griffith*, 362 F. Supp. 2d 1263, 1277 (D. Kan. 2005) (emphasis added).

5. Additionally, the Superseding Indictment fails to adequately apprise the Defendant Ayla Jarvis with sufficiency of the charge that she is facing. At present, the Defendant Ayla Jarvis is generically charged in Count 3 with money laundering, but as more fully argued in another submission, see “*Count III Defendants’ Joint Motion To Dismiss Count III, Or, In The Alternative, Motion For A Bill Of Particulars Pursuant To Fed. R. Crim. P. 7(c)(1), 7(f) & 12(b)(3)(b)*” filed contemporaneously herein, the Defendant Ayla Jarvis is unable to defend herself based upon the allegation contained in the Superseding Indictment. As it stands, for the vast majority of the time-span alleged in Count 3 (1990 through 2000 or later) there is a legal presumption that the Defendant Ayla Jarvis was too young to form criminal intent, let alone “knowingly [ ] use the proceeds of specified unlawful activity to promote the carrying on of illegal activity” as required by Tenth Circuit Pattern Jury Instruction 2.73. See *Allen v. United States*, 150 U.S. 551, 558, 14 S.Ct. 196, 198, 37 L.Ed. 1179 (1893) (infra) (setting forth ages of

possible culpability of juveniles). Based on the Superseding Indictment's glaring paucity of detail concerning Ayla Jarvis' involvement, dismissal by this Court of Count 3 and the Forfeiture Allegation is appropriate.

THIS COURT SHOULD DIRECT THAT THE GOVERNMENT ISSUE A BILL OF PARTICULARS

6. In the event that the Court determines that dismissal of Count 3 is not an appropriate remedy for the Government's failure to properly charge the Defendant Ayla Jarvis, the Federal Rules of Criminal Procedure 7(f) provides that the court "may direct the filing of a bill of particulars" and that a motion for bill of particulars "may be made before arraignment or within ten days after arraignment or at such later time as the court may permit." The purpose of a bill of particulars is to apprise the defendant of the charges against her in sufficient detail in order to minimize surprise at trial, to allow her to prepare an adequate defense, and to permit her to plead double jeopardy in the event of a subsequent prosecution for the same offense. *United States v. Higgins*, 2 F.3d 1094, 1096 (10th Cir. 1993); *see also United States v. Sturmoski*, 971 F.2d 452, 460 (10th Cir. 1992); *United States v. Gabriel*, 715 F.2d 1447, 1449 (10th Cir. 1983); *United States v. Barbieri*, 614 F.2d 715, 719 (10th Cir. 1980). The granting of a bill of particulars is within the court's discretion. *United States v. Dunn*, 841 F.2d 1026, 1029 (10th Cir. 1988); *accord United States v. Kunzman*, 54 F.3d 1522, 1526 (10th Cir. 1995); *United States v. Levine*, 983 F.2d 165, 166 (10th Cir. 1992).

7. In our adversary system of determining guilt or innocence, it is rarely justifiable for the prosecution to have exclusive access to a storehouse of relevant fact. Exceptions to this are justifiable only by the clearest and most compelling

considerations. *Dennis v. United States*, 384 U.S. 855, 873 (1966). Such considerations of basic fairness guided the Advisory Committee that recommended the 1966 amendment to Rule 7(f) of the Federal Rules of Criminal Procedure:

The 1966 amendment to Rule 7(f) of the Federal Rules of Criminal Procedure, eliminating the requirement that cause be shown before a bill of particulars may be ordered, is designed to encourage a more liberal attitude by the court towards bills of particulars without taking away the discretion which courts must have in individual cases.

*United States v. Addonizio*, 451 F.2d 49, 64 (3d Cir. 1971), *cert. denied*, 405 U.S. 936 (1972).

8. The Sixth Amendment to the United States Constitution requires that every person accused of a crime be informed of the nature and cause of the accusation. The trial court must insure that the government has presented its allegations with sufficient particularity and definiteness to unequivocally inform the accused of the specific nature of the charges upon which the indictment is laid. *United States v. Jaskiewicz*, 278 F.Supp. 525, 528 (E.D. Pa. 1968). The information necessary to satisfy this test is more than that necessary for an indictment to withstand a challenge to its sufficiency under Rule 7© of the Federal Rules of Criminal Procedure. This is because the key to passing on a bill of particulars is whether the information requested is necessary to the proper preparation of the defense, as opposed to simply giving a defendant notice of the accusation. The Tenth Circuit stated in *King v. United States*, 402 F.2d 289 (10th Cir. 1968):

While the discretion [to grant a bill of particulars] continues to reside in the trial court, it should be freely exercised with an awareness that an indictment may be sufficient on its face to state an offense, yet insufficient to adequately inform the accused of the charge against him to enable him to properly prepare his

defense.

*Id.* at 292.

9. In the present case, the Indictment is insufficient to enable the Defendant to prepare a defense, to avoid prejudicial surprise at trial, and to plead double jeopardy in the event of a later prosecution for the same offense. The Government has alleged conspiracies dating back to “approximately 1990” or when the Defendant Ayla Jarvis was three or four years old. The Defendant Ayla Jarvis acknowledges that she was nineteen at the time of indictment, and was an adult for approximately 13 months of the alleged 15-year conspiracies. However, it is unclear from the Superseding Indictment and from the voluminous discovery thus far produced, whether the Government will be relying upon acts allegedly committed by the Defendant Ayla Jarvis prior to or after her 18<sup>th</sup> birthday.

10. The Superseding Indictment fails to set forth the substantive facts of the Count 3 money laundering allegations, and fails to allege which defendant violated either or both subdivisions of section 1956 cited. Despite numerous factual possibilities available to prove a money laundering allegation, the United States elects *not a single* definition available under section 1956© as a limiting factor to identify the theory of the Government’s charging. This runs contrary to the fact that criminal defendants are entitled to know the theory of the charging. *United States v. Lot Numbered One of the Lavaland Annex*, 256 F.3d 949, 957 (10<sup>th</sup> Cir. 2001), *citing United States v. Levine*, 983 F.2d 165, 166-67 (10<sup>th</sup> Cir. 1992); *Wilson*, 244 F.3d at 1215. More importantly, Count 3 fails to identify a transaction, or a date of an alleged violation or even a means and manner of laundering in an alleged fifteen or sixteen year time frame, that pertains to

the Defendant Ayla Jarvis. See *United States v. Jensen*, 193 F. Supp. 2d 601, 605-06 (E.D.N.Y. 2002) (specific dates make an indictment sufficient). The Superseding Indictment provides no specifics as to the allegedly illegal transaction(s) which was undertaken by Ayla Jarvis (let alone by *any* co-defendant), which renders it deficient as to Count 3. Cf. *United States v. Esteves*, 886 F Supp 645 (N.D. Ill 1995) (indictment sufficient when transactions which form basis of charges, and time and place of transactions, as well as open file policy gives defendant all evidence within government's possession). Because Ayla Jarvis may very well have been a juvenile at the time of the alleged illegal transactions pertaining to Count 3, numerous other issues arise, namely the Government's failure to comply with the FJDA, see *infra*. In order to avoid a violation of the Defendant Ayla Jarvis' constitutional rights, a bill of particulars as to Ayla Jarvis' involvement in Count 3 is required .

11. As noted in the Defendant's "*Motion to Dismiss Counts 3 and the Forfeiture Allegation...*" filed contemporaneously herein, the Federal Juvenile Delinquency Act ("FJDA"), 18 U.S.C. § 5031 et seq., grants special protections to individuals who have not reached the age of 18 at the time of the alleged wrong-doing. Such individuals may not be proceeded against in a Court of the United States absent strict compliance with procedural transfer requirements.

12. Furthermore, the FJDA authorizes transfer to adult status for only certain delineated offenses, namely alleged violations of 21 U.S.C. § 841 (Controlled Substances Act) or 21 U.S.C. §§ 952(a), 953, 955, 959, 960(b)(1), (2), (3), and 18 U.S.C. §§ 922(x), 924(b), (g) or (h). See 18 U.S.C. § 5032. Substantive offenses which

are not included in section 5032 of the FJDA are not permitted to be brought against the juvenile accused. See, e.g. *United States v. Thomas*, 114 F.3d 228 (D.C. Cir. 1997); 18 U.S.C. § 5032 (specifying offenses). Only when the evidence demonstrates that a conviction is to be based solely on adult participation in a conspiracy, and not in whole or in part on acts committed as a juvenile, then a district court would have adult jurisdiction over the offense without the necessity of an FJDA transfer hearing.

However, when allegedly criminal conduct spans both before and after the accused's eighteenth birthday, then the FJDA is implicated and the Government must make a showing of post-18 conspiratorial activity. See *United States v. Gjoraj*, 861 F.2d 143, 144 (6<sup>th</sup> Cir. 1988) ("a defendant who entered conspiracy while under 18 may be tried as an adult upon a 'threshold showing of post-18 conspiracy activity'", quoting *United States v. Cruz*, 805 F.2d 1464, 1476 (11<sup>th</sup> Cir. 1986)).

13. Clearly, no acts committed by Ms. Jarvis or by any of the alleged co-conspirators prior to 1993 can be held against Ms. Jarvis, as juveniles under the age of seven years are held to be unable to form criminal intent and thus incapable of committing a felony. *Allen v. United States*, 150 U.S. 551, 558, 14 S.Ct. 196, 198, 37 L.Ed. 1179 (1893). Acts committed by Ms. Jarvis or by her alleged co-conspirators during the years 1993–2000, or when Ms. Jarvis was between the ages of seven and fourteen, are not admissible to prove guilt of Ms. Jarvis, as it is presumed that juveniles aged 8-14 are incapable of forming criminal intent, but such [presumption is rebuttable. *Id.* For the period of time from 2000 to 2004, when Ms. Jarvis was 14 to 18, there is no presumption that the juvenile could not have formed criminal intent, and therefore such



an individual could be proceeded against in the district court, but only after the Government has complied with the strict procedural mechanisms—i.e. “transfer”—of the FJDA. A bill of particulars is required to demonstrate that there has not been a violation of the FJDA.

14. What is crucial in the present case, then, is *when* Ms. Jarvis allegedly joined the conspiracy or conspiracies. Assuming Ms. Jarvis remained a part of the conspiracy in question beyond her 18<sup>th</sup> birthday, then there is the related question as to what conduct of co-conspirators may have been foreseeable by the Defendant Ayla Jarvis, and accordingly what conduct may be attributed to Ms. Jarvis as foreseeable relevant conduct. If a co-defendant’s conspiratorial conduct predated the supposed joining date by Ms. Jarvis, or occurred when Ms. Jarvis was a juvenile, then the Court would need to instruct the jury as to the inapplicability of such conduct to Ms. Jarvis. If the Government alleges and proves that Ms. Jarvis joined the conspiracy at, say, age 16, then presumably for purposes of relevant conduct, Ms. Jarvis may be responsible for all of the acts of her co-conspirators only after joining. For purposes of properly defending Ms. Jarvis, then, counsel must know the specific moment of Ms. Jarvis’ joining. To date, the Government has not identified specifically when it claims that Ms. Jarvis joined the alleged conspiracies.

15. In order to avoid a violation of Ms. Jarvis’ constitutional right to due process of law, this Court should order that the Government provide a bill of particulars as to (1) post-18 conduct of the Defendant Ayla Jarvis which allegedly makes her part of the money laundering conspiracy; and (2) pre-18 conduct which demonstrates a specific date as to her alleged joining of the conspiracy. Such vital information is not

readily discernable from the discovery, and certainly not from the Superseding Indictment. Without such information, the Defendant Ayla Jarvis will suffer unfair surprise at trial.

16. Counsel has contacted the Assistant United States Attorney James Braun concerning this motion, and Mr. Braun indicates that he opposes the relief requested.

CONCLUSION

17. The Defendant Ayla Jarvis respectfully requests that the Court dismiss Count 3 and the Forfeiture Allegation of the Superseding Indictment as to the Defendant Ayla Jarvis or, in the alternative, issue an Order directing that the United States Attorney's Office provide a bill of particulars as to the evidence it intends to offer against the Defendant Ayla Jarvis as to Count 3 and the Forfeiture Allegation of the Superseding Indictment.

Respectfully submitted:

Filed Electronically  
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I HEREBY CERTIFY that a true and correct copy of the foregoing pleading was mailed/delivered to Assistant United States Attorney James Braun on October 20, 2006.

Filed Electronically  
JOHN F. ROBBENHAAR